

821-PT-21

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SCHEDULING OF WORK

Introduction

A work schedule has a direct effect on an employee's pay entitlements. "Regularly scheduled work" means work that is scheduled before the beginning of the administrative workweek. Because the term "regularly scheduled work" is significant in determining premium pay entitlements, work schedules must reflect an employee's actual work requirements, including any period of regularly scheduled overtime work. This reference guide will focus on the administration of hours of duty and pay for General Schedule employees covered by a traditional work schedule (8 hours per day/40 hours per week with fixed starting and quitting times).

Rationale for work schedule

A work schedule is the time basis on which an employee is paid. This ensures that:

- employees are paid properly;
- allows managers to organize work to meet the needs of the agency;
- enables managers to identify the need to order overtime;
- defines the hours and the days against which leaves of absence must be charged;
- provides a basis for project accountability;
- allows employees to plan free time; and
- enables managers to determine payroll budgets.

**Terms used in
scheduling work**

Administrative workweek: the period of 7 consecutive calendar days designated in advance by agency head (e.g., Sunday through Saturday).

Agency: an Executive agency (Department of Defense) and a military department (Departments of Army, Navy, and Air Force) as defined by sections 105 and 102 of title 5, United States Code.

Basic workweek: the 40-hour workweek for full-time employees that includes the officially prescribed days and hours during which full-time employees are entitled to basic pay (e.g., Monday through Friday, 7:30AM to 4:30PM, with 1 hour for lunch).

Employee: those individuals covered by Subpart A of Part 550 of Title 5, Code of Federal Regulations, and prevailing rate employees.

Head of agency: head of agency or delegated official (i.e. the Component Secretaries). (Under 5 U.S.C. 302, the head of an agency may delegate to subordinate officials the authority vested in law to take final action on matters pertaining to employment, direction, and general administration of personnel in the agency. Therefore, management establishes an employee's work schedule.)

Irregular or occasional overtime work: overtime work that is not part of an employee's regularly scheduled administrative workweek.

Regular overtime work: overtime work that is part of an employee's regularly scheduled administrative workweek.

Regularly scheduled administrative workweek: the period employees are regularly scheduled to work within the administrative workweek. For full-time employees, it includes the basic workweek and any regularly scheduled overtime work. For part-time employees, it includes the officially prescribed days and hours during which they are regularly scheduled to work.

Regularly scheduled work: work scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks.

Tour of duty: the hours of a day and the days of an administrative

workweek that constitute an employee's regularly scheduled workweek.

Uncommon tour of duty: a tour of duty that exceeds 80 hours of work in a biweekly pay period, including hours of actual work plus hours in a standby status for which the employee is compensated by annual premium pay under 5 U.S.C. 5545(c)(1) and Subpart A of Part 550 of Title 5, Code of Federal Regulations.

**Statutory authority
to establish
workweeks**

For pay and leave purposes, the head of an agency must establish a basic workweek of 40 hours within the administrative workweek, extending over not more than 6 of any 7 consecutive days for each full-time employee. The basic workweek is the period for which an employee is paid his or her rate of basic pay. **Cite: 5 U.S.C. 6101(a)(2)**

**Assignment of
work**

The assignment of work is a right reserved to management. **Cite: 5 U.S.C. 7106(a)(2)(B).** This means management determines who will perform the work, when the work will be performed, establishes the qualifications and skills needed to perform the work and decides whether a particular employee is qualified to perform the work. Management, however, is required to give the union proper notice of any impending changes in working conditions and, if requested, to negotiate in good faith over the procedures it will observe in exercising any management right or appropriate arrangements for employees adversely affected by the exercise of such right. This is called impact and implementation bargaining. Failure to give adequate notice or bargain in good faith is called an unfair labor practice. Thus, management has the right to vary tours of duty and to change an employee's scheduled hours of duty to carry out its mission. At the election of an agency, however, management and labor may negotiate over such subjects as the administrative workweek, tours of duty, basic workweek, and work schedules. (Contact your local labor relations officer or the FAS Labor Team if you have questions about negotiated agreements.)

General rules for establishing work schedules

These rules apply unless the head of an agency finds that it would seriously handicap* the organization in carrying out its function or would substantially increase* operating costs:

- assign tours of duty at least 1 week in advance;
- schedule work on 5 days, Monday through Friday when possible, with 2 consecutive days off;
- set consistent working hours;
- workday may not exceed 8 hours (without incurring overtime pay entitlements) unless the employee is covered by an alternative work schedule;
- scheduled breaks may not exceed 1 hour; and
- basic workweek cannot be rescheduled to avoid paying holiday pay. **Cite: 5 CFR 610.121(a)**

Comment

* “Seriously handicap” and “substantially increase” are difficult tests to meet. Generally, the agency would fail to meet its mission if required to comply with these rules or would typically run out of funding for nonovertime pay.

Work schedule changes

An employee’s regularly scheduled administrative workweek must correspond with the employee’s actual work requirements. When a manager knows in advance that an employee’s administrative workweek will differ from the normal tour of duty, the manager must reschedule the employee’s administrative workweek to correspond with the specific days and hours the employee is expected to work. The manager must inform the employee of the change and record the change on the employee’s time card. If it is determined that a manager knew in advance that a period of work should have been scheduled as part of an employee’s administrative workweek and failed to do so, the employee will be entitled to premium pay for that period as regularly scheduled work. **Cite: 5 CFR 610.121(b)**

**Kinds of
work schedules**

A **full-time** work schedule requires employees to work a prearranged scheduled tour of duty that is usually 40 hours per week.

A **part-time** work schedule requires employees to work a prearranged scheduled tour of duty for a specific number of hours, usually between 16 and 32 hours per week.

An **intermittent** employee works on an irregular basis for which there is no prearranged tour of duty.

A **rotating** tour of duty is a regularly scheduled tour that periodically requires service on a different shift.

A **seasonal** employee works on an annual recurring basis for periods of less than 12 months each year; he/she may have full-time, part-time, or intermittent work schedules during his/her work season.

An **on-call** employee works when needed during periods of heavy workload with expected cumulative service of at least 6 months in a pay status each year; he/she may have either a full-time or a part-time schedule when in a pay status.

**First 40-hour tour
of duty**

Any employee may be placed on a first 40-hour tour of duty when it is impracticable to prescribe a regular schedule of definite hours of duty for each workday of a regularly scheduled administrative workweek. The first 40 hours must be performed within a period of not more than 6 days of the administrative workweek as the basic workweek. A first 40-hour tour of duty is appropriate, for example, when a scientist is monitoring an experiment continuously or when a civilian aircraft pilot must meet mission requirements which cannot be accomplished in a normal 8-hour workday. All work performed within the first 40 hours of the workweek is considered regularly scheduled work for premium pay and hours of duty purposes. Any additional hours of officially ordered or approved work within the administrative workweek are overtime.

Cite: 5 CFR 610.111(b)

Standby duty

When an employee has a tour of duty which requires him to remain at or within the confines of his station in a standby status rather than

performing actual work, his regularly scheduled administrative workweek is the total number of regularly scheduled hours of duty in a week. **Cite: 5 CFR 610.111(c)**

**Special tour of duty
for educational
purposes**

The head of an agency may disregard the general rules for establishing work schedules to allow an employee to take courses at a college, university, or educational institution. The courses taken need not be directly related to the work of the agency nor be considered training under chapter 41 of title 5, United States Code, but they should contribute to making the employee a more effective worker in the agency. Under these circumstances, rescheduling the customary workweek is permitted when it does not significantly interfere with the employee completing work assignments. The employee is still responsible for a full 40-hour workweek. No premium pay may be paid for those duty hours that are rescheduled. **Cite: 5 U.S.C. 6101(a)(4) and 5 CFR 610.122**

**Time on official
travel**

To the maximum extent possible, agencies should schedule travel within an employee's regularly scheduled workweek. When travel during nonduty hours is required, an employee may not be compensated for time spent in travel away from the official duty station unless it meets one or more of the conditions set forth in 5 U.S.C. 5542(b)(2) or 5 CFR 550.112(g). **Cite: 5 U.S.C. 6101(b)(2), 5 CFR 610.123**

For more information about travel as hours of work, please see the **FAS** reference guide, PT-1.

Lunch periods

Neither the law nor regulation prescribes a break for any purpose, including meals. However, agency heads have the authority to schedule breaks in an employee's workday of no greater than 1 hour. An example of such a break would be a break for lunch. During this period, an employee is off duty and in a nonpay status unless he/she is required to perform substantial official duties during the period.* Lunch breaks are provided for either administratively or through negotiated agreements between agencies and unions.

Comment

*If the employee is required to perform duties (that is work) during a lunch break, the employee is entitled to pay for that period.

QUESTIONS

Workweek

An employee's current schedule is Tues - Sat, 10:00AM to 6:00PM. She wants to work Mon - Fri, 12:30 - 6:00PM (5 1/2 hours) and 8 hours on Saturday for a total of 35.5 hours per week. She is requesting this schedule so that she can take her mother to receive radiation treatments. Can she spread her workweek over 6 days?

Management wants to accommodate her?

Yes, she can spread her workweek over 6 days but she still must account for 40 hours as a full-time employee. The proposed schedule only accounts for 35.5 hours.

An exempt employee's (Supv Librarian) normal schedule is Mon - Fri, 8AM to 5PM. To improve customer service, management wants to change her daily tour of duty on Wednesday from 11:15AM to 8:15PM and on Friday from 9:15AM to 6:15PM. Can management change the head librarian's schedule as proposed. What about establishing a first-40 hour tour of duty for her?

It is perfectly legal to arrange an employee's schedule to meet the mission of an organization. Given this proposed schedule, the librarian would be entitled to 2 1/2 hours of night pay per week. Establishing a first-40 hour tour of duty is inappropriate since a regular schedule of definite hours of duty for each workday of the administrative workweek would be prescribed.

Work Schedules

Phone duty is rotated through the staff a week at a time during the lunch period. The employee who is assigned phone duty is required to answer the phones during the 30-minute lunch period, but is free to eat. In return, the employee is permitted to leave work 30 minutes early. Is this arrangement legal?

No. An employee may not leave work early because the employee has phone duty during the lunch break. The lunch break is not considered hours of duty. Therefore, no offset for lunch breaks may be made. When an employee must stay near the phone during a lunch break and is free to eat, the period is not automatically considered "hours of work." The employee must be performing substantial duties during the lunch period to be paid. (CG Decision B-179412.) It appears that the employee is leaving work after 7 1/2 hours of work. A normal schedule with a 30-minute lunch break would be 8 1/2 hours.

Is 34 hours of regularly scheduled work a week a legitimate part-time schedule?

No, part-time career employment means regularly scheduled work of 16 to 32 hours a week.

Can an organization establish an “uncommon tour of duty” for a group of quality assurance inspectors who periodically oversee the work of contractor employees at night? Management plans to reschedule their work for such periods by breaking their 8-hour workday into 4 hours during the day, a 4 hour break, and 4 hours at night. The organization typically knows in advance of the administrative workweek when the employees will be required to monitor the contractors.

5 U.S.C. 6101(a)(3) (F) and 5 CFR 610.121 prohibit agencies from establishing breaks of more than 1 hour during a basic workday schedule. Therefore, the proposed schedule with a 4-hour break is in violation of both the law and regulations.

If management does not change the work schedules, they would incur additional personnel costs in both overtime and night pay. A possible recommendation would be to change the employees’ work schedules to begin the duty day later to ensure coverage during the evening hours. However, if conditions under 5 CFR 550.121 are met, the employees would be entitled to a night pay differential.

Should a supervisor change an employee’s schedule if he knows in advance that it will differ from his administrative workweek?

When the head of an agency knows in advance of an administrative workweek that the specific days and/or hours of a day actually required of that employee in an administrative workweek will differ from those required in the current administrative workweek, he or she shall reschedule the employee’s regularly scheduled administrative workweek to correspond with those specific days and hours. Cite: 5 CFR 610.121(b)(2)

Management wants to schedule a nonexempt employee to work 14 days in a row. On 9 of those days, he will be required to work a 12-hour shift. Is there any limitation on how many consecutive days employees can be ordered to work? Is the employee entitled to a day off during the 14 days?

Other than safety considerations, there is no legal or regulatory restriction against it. No, the employee is not entitled to a day off if he has been ordered to work overtime.

May management change an employee’s tour of duty by splitting the employee’s shift? Management would like to send a daycare worker home in the middle of the day for 2 or 3 hours.

No, management may not split the employee's regular tour of duty as proposed. Breaks in working hours of more than 1 hour may not be scheduled in the basic workweek. Cite: 5 U.S.C. 6101(a)(3)(F)

Who establishes lunch breaks? Are lunch breaks prescribed by law or regulated?

Lunch breaks are not prescribed by either law or regulation. Management establishes work schedules and hours of work which may include lunch breaks. They are provided for by internal agency practices and procedures, and by negotiated agreements between agencies and union.

Is there a requirement to schedule a lunch break during the work day? The union wants to bargain for the exclusion of a lunch break in the work day.

5 U.S.C. 6101 and 5 CFR 610.121 address establishment of work schedules; neither require that a lunch break be scheduled.

Employees have been combining scheduled 30 minute lunch breaks with their 15 minute AM and PM breaks into a 50 minute "lunch" period. Is this appropriate?

Paid breaks may not be combined with unpaid lunch to increase lunch time available. The two types of "breaks" are provided under different law, and are not compatible. "On- the-clock breaks should not be combined with off-the-clock lunch breaks. See CG decisions B-217578 and B-190011 for more information.

May employees shorten their day by working through lunch or working 8 hours straight with no lunch?

Employees may not work through an administratively set or negotiated lunch break and leave early. A lunch period is not considered hours of work. Therefore, if an employee leaves work early (30 minutes), the employee has not worked a full 8 hours and owes the government for that time. In essence, the employee has only worked 7 1/2 hours.

Employees believe they are entitled to a 20 minute break. Where is the cite in the regulations?

5 CFR 551.411(b), which covers nonexempt employees only, says that any rest period authorized by an agency that does not exceed 20 minutes and that is within the workday shall be considered hours of work.

An employee who is on a compressed work schedule anticipates overtime when she goes TDY for a four week assignment. The CPO wants to change her tour of duty to 5-

8 hour days to conform to the work requirements at the TDY location. She thinks this is unfair. If there a cite to justify management's action?

Management must establish an employees' work schedules to accomplish the agency's mission and must reschedule an employee's administrative workweek to correspond with an employee's actual work requirements. Cite: 5 CFR 610.121(b) Furthermore, neither flexible nor compressed work schedules are appropriate if they increase an agency's costs.

Variation for Educational Purposes

A temporary employee has asked that her work schedule be adjusted so she can take two back-to-back courses which are offered 3 times a week. She would be away from the office for approximately 3 hours on each of these days. Given that a break of more than 1 hour cannot be scheduled in the working hours of any workday, can they accommodate her request?

Yes. The general rules for establishing work schedules which are provided for at 5 CFR 610.121 may be disregarded when the head of an agency authorizes a rescheduling of the customary workweek to allow an employees to take educational courses. The employee is still responsible for a full 40-hour workweek, and no premium pay may be paid because of the rescheduling.

An employee has been attending a local university on a part-time basis, taking job-related courses. The Government had been paying for the classes, but now the employee plans to pay for the classes himself. Can management schedule the employee to work 7 hours each day (Mon-Fri) and 5 hours on Saturday to meet his 40 hour work requirement?

Yes. Management may authorize a special tour of duty of not less than 40 hours to permit the employee to take one or more courses in a college or university provided all of the conditions in 5 CFR 610.122(a) are met.